

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: PHILIPS RECALLED CPAP, BI-LEVEL PAP, AND MECHANICAL VENTILATOR PRODUCTS LITIGATION	:	Master Docket: Misc. No. 21-mc-1230-JFC
	:	
	:	MDL No. 3014
	:	AMENDED
	:	SHORT FORM COMPLAINT FOR
This Document Relates to:	:	PERSONAL INJURIES, DAMAGES,
Elie Zaarour; Roula Zaarour, Plaintiffs,	:	AND DEMAND FOR JURY TRIAL
v.		
Koninklijke Phillips N.V. et al.		

Plaintiff(s) incorporate(s) by reference the Amended Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial filed in *In re Philips Recalled CPAP, Bi-Level PAP, and Mechanical Ventilator Products Litigation*, MDL No. 3014, Master Docket Misc. No. 21-mc-1230 (the “Master Long Form Complaint”). This Short Form Complaint adopts the allegations, claims, and requested relief as set forth in the Master Long Form Complaint. As necessary herein, Plaintiff(s) may include: (a) additional claims and allegations against Defendants; and/or (b) additional claims and allegations against other Defendants not listed in the Master Long Form Complaint.

Plaintiff(s) further allege(s) as follows:

I. DEFENDANTS

1. Plaintiff(s) name(s) the following Defendants in this action:

- ☒ Koninklijke Philips N.V.
- ☒ Philips North America LLC.
- ☒ Philips RS North America LLC.

- ☒ Philips Holding USA Inc.
- ☒ Philips RS North America Holding Corporation.
- ☒ Polymer Technologies, Inc.
- ☒ Polymer Molded Products LLC.

II. PLAINTIFF(S)

2. Name of Plaintiff(s):

Elie T. Zaarour

3. Name of spouse of Plaintiff (if loss of consortium claim is being made):

Roula Zaarour

4. Name and capacity (*i.e.*, executor, administrator, guardian, conservator, etc.) of other Plaintiff, if any:

Not Applicable.

5. State(s) of residence of Plaintiff(s) (if the Recalled Device user is deceased, residence at the time of death):

California

III. DESIGNATED FORUM

6. Identify the forum (United States District Court and Division) in which the Plaintiff would have filed in the absence of direct filing:

Superior Court of California, County of Los Angeles

IV. USE OF A RECALLED DEVICE

7. Plaintiff used the following Recalled Device(s):

<input type="checkbox"/> <i>E30 (Emergency Use Authorization)</i>	<input type="checkbox"/> <i>Dorma 500</i>
<input type="checkbox"/> <i>DreamStation ASV</i>	<input type="checkbox"/> <i>REMstar SE Auto</i>
<input type="checkbox"/> <i>DreamStation ST, AVAPS</i>	<input type="checkbox"/> <i>Trilogy 100</i>
<input type="checkbox"/> <i>SystemOne ASV4</i>	<input type="checkbox"/> <i>Trilogy 200</i>
<input type="checkbox"/> <i>C-Series ASV</i>	<input type="checkbox"/> <i>Garbin Plus, Aeris, LifeVent</i>
<input type="checkbox"/> <i>C-Series S/T and AVAPS</i>	<input type="checkbox"/> <i>A-Series BiPAP Hybrid A30 (not marketed in U.S.)</i>
<input type="checkbox"/> <i>OmniLab Advanced +</i>	<input type="checkbox"/> <i>A-Series BiPAP V30 Auto</i>
<input type="checkbox"/> <i>SystemOne (Q-Series)</i>	<input type="checkbox"/> <i>A-Series BiPAP A40</i>
<input checked="" type="checkbox"/> <i>DreamStation</i>	<input type="checkbox"/> <i>A-Series BiPAP A30</i>
<input type="checkbox"/> <i>DreamStation Go</i>	<input type="checkbox"/> <i>Other Philips Respironics Device; if other, identify the model:</i>
<input type="checkbox"/> <i>Dorma 400</i>	

V. INJURIES

8. Plaintiff alleges the following physical injuries as a result of using a Recalled Device together with the attendant symptoms and consequences associated therewith:

- ☐ COPD (new or worsening)
- ☐ Asthma (new or worsening)
- ☐ Pulmonary Fibrosis
- ☐ Other Pulmonary Damage/Inflammatory Response
- ☒ Cancer Kidney (specify cancer)
- ☐ Kidney Damage
- ☐ Liver Damage

☐ Heart Damage

☐ Death

☒ Other (specify)

Complete medical records not yet received to determine if there are other injuries.

VI. CAUSES OF ACTION/DAMAGES

9. As to Koninklijke Philips N.V., Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

- ☒ Count I: Negligence
- ☒ Count II: Strict Liability: Design Defect
- ☒ Count III: Negligent Design
- ☒ Count IV: Strict Liability: Failure to Warn
- ☒ Count V: Negligent Failure to Warn
- ☒ Count VI: Negligent Recall
- ☒ Count VII: Battery
- ☒ Count VIII: Strict Liability: Manufacturing Defect
- ☒ Count IX: Negligent Manufacturing
- ☒ Count X: Breach of Express Warranty
- ☒ Count XI: Breach of the Implied Warranty of Merchantability
- ☒ Count XII: Breach of the Implied Warranty of Usability
- ☒ Count XIII: Fraud
- ☒ Count XIV: Negligent Misrepresentation

- ☒ Count XV: Negligence Per Se
 - ☒ Count XVI: Consumer Fraud and/or Unfair and Deceptive Practices Under State Law
 - ☒ Count XVII: Unjust Enrichment
 - ☒ Count XVIII: Loss of Consortium
 - ☒ Count XIX: Survivorship and Wrongful Death
 - ☒ Count XX: Medical Monitoring
 - ☒ Count XXI: Punitive Damages
 - ☐ Count XXII: Other [specify below]
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10. As to Philips North America LLC, Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

- ☒ Count I: Negligence
- ☒ Count II: Strict Liability: Design Defect
- ☒ Count III: Negligent Design
- ☒ Count IV: Strict Liability: Failure to Warn
- ☒ Count V: Negligent Failure to Warn
- ☒ Count VI: Negligent Recall
- ☒ Count VII: Battery
- ☒ Count VIII: Strict Liability: Manufacturing Defect
- ☒ Count IX: Negligent Manufacturing

- ☒ Count X: Breach of Express Warranty
- ☒ Count XI: Breach of the Implied Warranty of Merchantability
- ☒ Count XII: Breach of the Implied Warranty of Usability
- ☒ Count XIII: Fraud
- ☒ Count XIV: Negligent Misrepresentation
- ☒ Count XV: Negligence Per Se
- ☒ Count XVI: Consumer Fraud and/or Unfair and Deceptive Practices Under State Law
- ☒ Count XVII: Unjust Enrichment
- ☒ Count XVIII: Loss of Consortium
- ☒ Count XIX: Survivorship and Wrongful Death
- ☒ Count XX: Medical Monitoring
- ☒ Count XXI: Punitive Damages
- ☐ Count XXII: Other [specify below]

11. As to Philips RS North America LLC, Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

- ☒ Count I: Negligence
- ☒ Count II: Strict Liability: Design Defect
- ☒ Count III: Negligent Design
- ☒ Count IV: Strict Liability: Failure to Warn

- ☒ Count V: Negligent Failure to Warn
 - ☒ Count VI: Negligent Recall
 - ☒ Count VII: Battery
 - ☒ Count VIII: Strict Liability: Manufacturing Defect
 - ☒ Count IX: Negligent Manufacturing
 - ☒ Count X: Breach of Express Warranty
 - ☒ Count XI: Breach of the Implied Warranty of Merchantability
 - ☒ Count XII: Breach of the Implied Warranty of Usability
 - ☒ Count XIII: Fraud
 - ☒ Count XIV: Negligent Misrepresentation
 - ☒ Count XV: Negligence Per Se
 - ☒ Count XVI: Consumer Fraud and/or Unfair and Deceptive Practices Under State Law
 - ☒ Count XVII: Unjust Enrichment
 - ☒ Count XVIII: Loss of Consortium
 - ☒ Count XIX: Survivorship and Wrongful Death
 - ☒ Count XX: Medical Monitoring
 - ☒ Count XXI: Punitive Damages
 - ☐ Count XXII: Other [specify below]
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12. As to Philips Holding USA Inc., Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

- ☒ Count I: Negligence
- ☒ Count II: Strict Liability: Design Defect
- ☒ Count III: Negligent Design
- ☒ Count IV: Strict Liability: Failure to Warn
- ☒ Count V: Negligent Failure to Warn
- ☒ Count VI: Negligent Recall
- ☒ Count VII: Battery
- ☒ Count VIII: Strict Liability: Manufacturing Defect
- ☒ Count IX: Negligent Manufacturing
- ☒ Count X: Breach of Express Warranty
- ☒ Count XI: Breach of the Implied Warranty of Merchantability
- ☒ Count XII: Breach of the Implied Warranty of Usability
- ☒ Count XIII: Fraud
- ☒ Count XIV: Negligent Misrepresentation
- ☒ Count XV: Negligence Per Se
- ☒ Count XVI: Consumer Fraud and/or Unfair and Deceptive Practices Under State Law
- ☒ Count XVII: Unjust Enrichment
- ☒ Count XVIII: Loss of Consortium
- ☒ Count XIX: Survivorship and Wrongful Death
- ☒ Count XX: Medical Monitoring

- ☒ Count XXI: Punitive Damages
- ☐ Count XXII: Other [specify below]

13. As to Philips RS North America Holding Corporation, Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

- ☒ Count I: Negligence
- ☒ Count II: Strict Liability: Design Defect
- ☒ Count III: Negligent Design
- ☒ Count IV: Strict Liability: Failure to Warn
- ☒ Count V: Negligent Failure to Warn
- ☒ Count VI: Negligent Recall
- ☒ Count VII: Battery
- ☒ Count VIII: Strict Liability: Manufacturing Defect
- ☒ Count IX: Negligent Manufacturing
- ☒ Count X: Breach of Express Warranty
- ☒ Count XI: Breach of the Implied Warranty of Merchantability
- ☒ Count XII: Breach of the Implied Warranty of Usability
- ☒ Count XIII: Fraud
- ☒ Count XIV: Negligent Misrepresentation
- ☒ Count XV: Negligence Per Se

- ☒ Count XVI: Consumer Fraud and/or Unfair and Deceptive Practices Under State Law
- ☒ Count XVII: Unjust Enrichment
- ☒ Count XVIII: Loss of Consortium
- ☒ Count XIX: Survivorship and Wrongful Death
- ☒ Count XX: Medical Monitoring
- ☒ Count XXI: Punitive Damages
- ☐ Count XXII: Other [specify below]

14. As to Polymer Technologies, Inc., Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

- ☒ Count I: Negligence
- ☒ Count II: Strict Liability: Design Defect
- ☒ Count III: Negligent Design
- ☒ Count IV: Strict Liability: Failure to Warn
- ☒ Count V: Negligent Failure to Warn
- ☒ Count VIII: Strict Liability: Manufacturing Defect
- ☒ Count IX: Negligent Manufacturing
- ☒ Count XIII: Fraud
- ☒ Count XIV: Negligent Misrepresentation
- ☒ Count XVII: Unjust Enrichment

- ☒ Count XVIII: Loss of Consortium
- ☒ Count XIX: Survivorship and Wrongful Death
- ☒ Count XX: Medical Monitoring
- ☒ Count XXI: Punitive Damages
- ☐ Count XXII: Other [specify below]

15. As to Polymer Molded Products LLC, Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

- ☒ Count I: Negligence
- ☒ Count II: Strict Liability: Design Defect
- ☒ Count III: Negligent Design
- ☒ Count IV: Strict Liability: Failure to Warn
- ☒ Count V: Negligent Failure to Warn
- ☒ Count VIII: Strict Liability: Manufacturing Defect
- ☒ Count IX: Negligent Manufacturing
- ☒ Count XIII: Fraud
- ☒ Count XIV: Negligent Misrepresentation
- ☒ Count XVII: Unjust Enrichment
- ☒ Count XVIII: Loss of Consortium
- ☒ Count XIX: Survivorship and Wrongful Death
- ☒ Count XX: Medical Monitoring

☒ Count XXI: Punitive Damages

☐ Count XXII: Other [specify below]

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16. If additional claims against the Defendants identified in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial are alleged above, the additional facts, if any, supporting these allegations must be pleaded. Plaintiff(s) assert(s) the following additional factual allegations against the Defendants identified in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial:

Not Applicable.

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17. Plaintiff(s) contend(s) that additional parties may be liable or responsible for Plaintiff(s)' damages alleged herein. Such additional parties, who will be hereafter referred to as Defendants, are as follows (must name each Defendant and its citizenship):

Defendant SuperCare Health, Inc. is a citizen of California and a corporation organized and existing under the laws of the state of California with its principal place of business located at 8345 Firestone Boulevard, Suite 210, Downey, California 90241. This defendant marketed, sold, supplied, and distributed the recalled CPAP or performed an act which brought the CPAP to market.

Plaintiffs asserts the following counts/causes of action asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegation and prayer for relief with regard thereto against SuperCare Health, Inc. as follows: Counts I through XVIII, and Counts XX through XXI.

18. Plaintiff(s) assert(s) the following additional claims and factual allegations against other Defendants named in Paragraph 16 above:

To be determined.

WHEREFORE, Plaintiff(s) pray(s) for relief and judgment against Defendants and all such further relief that this Court deems equitable and just as set forth in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial and any additional relief to which Plaintiff(s) may be entitled.

Date: Jan 27 2023



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